



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 22, 1995

Ms. Detra G. Hill  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
501 Police & Courts Building  
Dallas, Texas 75201

OR95-780

Dear Ms. Hill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29513.

The City of Dallas (the "city"), through its police department, has received a request for a certain Internal Affairs Division ("IAD") file. You indicate that the city will make some of the requested information available to the requestor. You seek, however, to withhold the remainder of the requested information from required public disclosure under sections 552.101 and 552.108 of the Government Code.

We conclude that section 552.101 does not except the requested information from disclosure. You contend that section 552.101 of the Government Code in conjunction with article 39.14 of the Code of Criminal Procedure protects the requested information. Article 39.14 governs discovery in criminal cases. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 does not, however, incorporate discovery privileges into the Open Records Act. Information that is privileged in discovery is not made confidential by law; it is "privileged" only to the extent that the court in a particular case considers it to be so. Open Records Decision No. 575 (1990) at 2. Thus, you may not withhold the requested information under section 552.101 of the Government Code in conjunction with article 39.14 of the Code of Criminal Procedure.

You may, however, withhold some of the information you submitted for review under section 552.108. Section 552.108 excepts from required public disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 2 (citing *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.*

You indicate that the requested file contains information regarding an IAD investigation and that the IAD investigation is closely intertwined with a criminal investigation regarding the same incident. We agree with your contention regarding most of the information you submitted for review. Nonetheless, some of the information you submitted for review appears to be related solely to the employment of two individuals. Generally, personnel information regarding police department employees, including information regarding disciplinary action, is not protected from disclosure by section 552.108. *See Open Records Decision No. 562 (1990) at 10.* Thus, you may not withhold this information under section 552.108. You may, however, withhold the remaining information under section 552.108. We have marked the documents accordingly.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/GCK/rho

Ref.: ID# 29513

Enclosures: Marked documents

cc: Ms. Gail Rosman  
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Lancaster, Texas 75146  
(w/o enclosures)